

Memorandum of Decision: 04-20170208R
Gross Retail Tax
For the Year 2016

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Memorandum of Decision.

HOLDING

Out-of-State Car Company was entitled to a refund of sales tax paid on the purchase of a vehicle from an Indiana auctioneer because the sale occurred in "interstate commerce;" the auctioneer arranged for and paid a third-party carrier to transport the vehicle from the auctioneer's location to Out-of-State Car Company's location.

ISSUE

I. Gross Retail Tax - Out-of-State Vehicle Sale.

Authority: IC § 6-2.5-2-1(a); IC § 6-2.5-2-1(b); IC § 6-2.5-9-3; Sales Tax Information Bulletin 28S (March 2017); Sales Tax Information Bulletin 28S (December 2016); Sales Tax Information Bulletin 28S (April 2012).

Taxpayer argues it is entitled to a refund of Indiana sales tax paid on the purchase of an automobile later delivered to Taxpayer's out-of-state location.

STATEMENT OF FACTS

Taxpayer is an out-of-state company in the business of buying and selling classic automobiles. Taxpayer's representative purchased an automobile from an Indiana auctioneer. According to Taxpayer, the Indiana auctioneer shipped the vehicle to Taxpayer's out-of-state location. However, the Indiana auctioneer insisted on collecting Indiana sales tax from Taxpayer at the time of the sale.

Taxpayer subsequently submitted a form "GA-110L" ("Claim for Refund") seeking a refund of approximately \$3,400 in sales tax. On the refund claim, Taxpayer stated that it was entitled to the refund because the "Interstate sales exemption applies."

The Indiana Department of Revenue ("Department") responded in a letter dated February 2017. The Department denied the claim explaining as follows:

The Department has reviewed the claim and hereby denies the claim in full based upon the reason(s) below.

The supporting documentation does not substantiate the basis of your claim for refund.

Taxpayer disagreed with the Department's decision denying the refund and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This Memorandum of Decision results.

I. Gross Retail Tax - Out-of-State Vehicle Sale.

DISCUSSION

Taxpayer maintains that it was not required to pay sales tax on the purchase of its vehicle because the transaction occurred in "interstate commerce." As such, Taxpayer argues that it is entitled to a refund of the sales tax paid to the auctioneer.

Indiana imposes an excise tax called "the state gross retail tax" (or "sales tax") on retail transactions made in Indiana. IC § 6-2.5-2-1(a). A retail merchant - such as the Indiana auctioneer - is required to "collect the tax as agent for the state." IC § 6-2.5-2-1(b). The retail merchant "holds those taxes in trust for the state and is personally liable for the payment of those taxes" IC § 6-2.5-9-3.

Sales Tax Information Bulletin 28S (March 2017), 20170426 Ind. Reg. 045170210NRA, provides as follows:

A vehicle or trailer sold in **interstate commerce** is not subject to the Indiana sales tax. To qualify as being "sold in interstate commerce," the vehicle or trailer **must be physically delivered, by the selling dealer to a delivery point outside Indiana**. The delivery may be made by the dealer or the dealer may hire a third-party carrier. Terms and the method of delivery must be indicated on the sales invoice. The dealer must document terms of delivery and must keep a copy of such terms of delivery to substantiate the interstate sale. The exemption does not apply to sales to out-of-state buyers in which the buyer takes physical possession of a vehicle or trailer in Indiana, nor is the exemption valid if the buyer, and not the seller, hires a third-party carrier to transport the vehicle or trailer outside Indiana. If the buyer hires the carrier, the carrier is acting as an agent for the buyer; thus, the buyer takes physical possession within Indiana. Possession taken within the state does not qualify as an interstate sale. *See also* Sales Tax Information Bulletin 28S (December 2016), 20170426 Ind. Reg. 045170210NRA; Sales Tax Information Bulletin 28S (April 2012), 20120530 Ind. Reg. 045120259NRA.

(Emphasis in original).

In this instance, Taxpayer has provided documentation establishing that it purchased the vehicle from the Indiana auctioneer, that it was charged for and paid Indiana sales tax on the purchase, and - most importantly - that the Indiana auctioneer arranged for and paid a third-party carrier to transport the vehicle from the Indiana auctioneer's location to Taxpayer's out-of-state location. As such, Taxpayer did not "take[] physical possession within Indiana" and the vehicle was "sold in interstate commerce." Taxpayer's vehicle purchase was not subject to Indiana sales tax because Taxpayer has established that its vehicle was "physically delivered, by the selling dealer to a delivery point outside Indiana." Taxpayer is entitled to the refund.

FINDING

Taxpayer's protest is sustained.

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